Bentonite Performance Minerals, LLC, a Product and Service Line of Halliburton Energy Services, Inc. *and* International Chemical Workers Union Council/United Food and Commercial Workers Union, CLC, Local 353C. Cases 27–CA–20596, 27–CA–20681, and 27–CA–20697

December 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On June 2, 2008, Administrative Law Judge James M. Kennedy issued the attached decision. The Respondent filed exceptions, a supporting brief, and an answering brief. The General Counsel filed cross-exceptions, a supporting brief, and an answering brief. The Charging Party filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order as modified[3] and set forth in full below.[4]

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain steps to effectuate the policies of the Act. Having adopted the judge's findings that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union, failing to furnish the Union with information requested on July 19 and 23, 2007, and unilaterally changing wages and other terms and conditions of employment, we shall order, in addition to the relief described in the remedy section of the judge's decision, the Respondent to (1) immediately provide the information requested by the Union in its letters of July 19 and 23, 2007; (2) on request, bargain in good

[1] The Respondent contends that some of the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(1) by interrogating and promising benefits to employees Ivan Bierma and Dick Holdhusen, we do not rely on his findings that Plant Manager Mike Houston's use of a comparison chart, highlighting the differences in benefits between its union and nonunion facilities, was "intended to spark" a conversation regarding the decertification of the Union, and that the Respondent's use of the comparison chart, alone, constituted a promise of benefits. Rather, we rely on evidence that, when Houston showed Bierma and Holdhusen the comparison chart, he asked whether they had signed "the paper," referenced his managerial "power to do stuff," and told them that things "would be better around here." Further, in view of these promise-of-benefits findings, we find it unnecessary to pass on the judge's findings concerning additional promises of benefits to employees, as any such findings would be cumulative and would not affect the remedy.

We adopt the judge's finding that the Respondent violated Sec. 8(a)(1) by interrogating employee John Preisner. However, we find it unnecessary to pass on the judge's additional finding, that the Respondent violated Sec. 8(a)(1) by interrogating employee Dan McGinnis, as any such finding would be cumulative and would not affect the remedy.

We additionally adopt the judge's findings that the Respondent violated Sec. 8(a)(1) by soliciting employees Gregory DeKnikker, Preisner, Zachary Zupan, Thomas Davis, Charles Callison, Dave Dell, and McGinnis. We therefore find it unnecessary to pass on the judge's findings that the Respondent violated Sec. 8(a)(1) by soliciting employees William Kester, John Kreitel, and Jeffrey Westland, as any such findings would be cumulative and would not affect the remedy. The General Counsel excepts to the judge's failure to find that employees Marty Brosnahan, McGinnis, Preisner, and Westland were agents of the Respondent. We find it unnecessary to pass on those exceptions as any such additional 8(a)(1) solicitation findings based on their agency status would be cumulative and would not affect the remedy.

The Respondent excepts to the judge's finding that it violated Sec. 8(a)(1) by discouraging the employees from attending a union meeting. The Respondent, however, does not state, either in its exceptions or supporting brief, any grounds on which this purportedly erroneous finding should be overturned. Therefore, in accordance with Sec. 102.46(b)(2) of the Board's Rules and Regulations, we shall disregard this exception. See *Holsum de Puerto Rico, Inc.,* 344 NLRB 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006).

[3] The judge recommended imposing a broad remedial cease-and-desist order on the ground that the Respondent had demonstrated a proclivity to violate the Act. See *Hickmott Foods*, 242 NLRB 1357 (1979). We find that, under the circumstances, including that the General Counsel did not seek this remedy, a broad order is not warranted, and we shall substitute a narrow order requiring the Respondent to cease and desist from violating the Act "in any like or related manner."

In its exceptions, the General Counsel contends that the judge's restoration remedy does not permit the Union to "pick and choose" which benefits should be rescinded or restored. We have modified the judge's restoration remedy to require the Respondent to rescind only those unilateral changes as to which the Union seeks rescission.

We shall modify the judge's recommended remedy to include the Board's traditional make-whole language for any losses of benefits resulting from the Respondent's unilateral changes, including its amendments to the employees' retirement plan, health benefits plan, vacation benefits, and wages. In addition, we shall modify the judge's recommended Order and substitute a new notice to include the Board's standard remedial language for the violations found.

[4] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

faith with the Union; and (3) if requested by the Union, rescind any or all of the unilateral changes and restore the previously existing wages and other terms and conditions of employment. To the extent that the unlawful unilateral changes have improved the terms and conditions of employment of unit employees, the Order set forth below shall not be construed as requiring or authorizing the Respondent to rescind such improvements unless requested to do so by the Union. We shall further order the Respondent to make unit employees and former unit employees whole for any losses suffered as a result of those unilateral changes in the manner prescribed in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

In addition, we shall require, to the extent applicable, the Respondent to remit all payments it owes to employee retirement, 401(k), and health care funds, with interest, as provided in *Merryweather Optical Co.,* 240 NLRB 1213 (1979), and to make employees and former employees whole for any expenses they may have incurred as a result of the Respondent's failure to make such payments, as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).[5]

The judge recommended an affirmative bargaining order to remedy the Respondent's unlawful withdrawal of recognition, but did not justify imposition of such an order as required by the United States Court of Appeals for the District of Columbia Circuit. Nevertheless, for the reasons set forth below, we agree with the judge that an affirmative bargaining order is warranted on the facts of this case.

The Board has previously held that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Caterair International*, 322 NLRB 64, 68 (1996). In several cases, however, the United States Court of Appeals for the District of Columbia Circuit has required the Board to justify, on the facts of each case, the imposition of an affirmative bargaining order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB,* 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material Corp*. v. *NLRB,* 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos, Inc. v. NLRB,* 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent Industrial Plastics*, supra, the court stated that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Supra at 738. Consistent with the court's requirement, we have examined the particular facts of this case and we find that a balancing of the three factors warrants an affirmative bargaining order.[6]

(1) As the Board stated in *Parkwood Developmental Center, Inc.,*[7] an affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's unlawful withdrawal of recognition and resulting refusal to collectively bargain with the Union. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the order's duration is not indefinite but only for a reasonable period of time sufficient to allow the good-faith bargaining that the Respondent's unlawful withdrawal of recognition cut short. It is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that employees' Section 7 right to union representation is vindicated. It will also give employees an opportunity to fairly assess the Union's effectiveness as a bargaining representative and determine whether continued representation by the Union is in their best interests.

[5] As the Board stated in *Larry Geweke Ford*, 344 NLRB 628 (2005), "[t]he standard remedy for unilaterally implemented changes in health insurance coverage is to order the restoration of the status quo ante." (Cites omitted.) The Respondent may litigate in compliance whether it would be unduly burdensome to restore the health insurance carrier in effect prior to July 13, 2007. Id. See also *Laurel Baye Healthcare of Lake Lanier, LLC*, 352 NLRB No. 30, slip op. at 1 fn. 3 (2008). If, however, the Union chooses continuation of the unilaterally implemented health insurance policy, then make-whole relief for the unilateral changes is inapplicable. See id. (citing *Brooklyn Hospital Center,* 344 NLRB 404 (2005)). Although Member Liebman dissented on that point in *Brooklyn Hospital Center,* supra at fn. 3, she recognizes that it is extant Board law and, for that reason alone, applies it here.

[6] Chairman Schaumber does not agree with the view expressed in *Caterair International*, supra, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) violation." He agrees with the United States Court of Appeals for the District of Columbia Circuit that a case-by-case analysis is required to determine if the remedy is appropriate. *Alpha Associates,* 344 NLRB 782 fn. 14 (2005). He recognizes, however, that the view expressed in *Caterair International,* supra, represents extant Board law. *Flying Foods,* 345 NLRB 101 fn. 23 (2005). Regardless of which view is applied here, Chairman Schaumber agrees that an affirmative bargaining order is warranted.

[7] 347 NLRB 974, 976–977 (2006).

(2) An affirmative bargaining order also serves the Act's policies of fostering meaningful collective bargaining and industrial peace. It removes the Respondent's incentive to delay bargaining in the hope of discouraging support for the Union, and it ensures that the Union will not be pressured to achieve immediate results at the bargaining table—results that might not be in the employees' best interests. It fosters industrial peace by reinstating the Union to its rightful position as the bargaining representative chosen by a majority of the employees. Also, as mentioned, providing this temporary period of insulated bargaining will afford employees a fair opportunity to assess the Union's performance in an atmosphere free of the effects of the Respondent's unlawful withdrawal of recognition and refusal to bargain.

(3) As an alternative remedy, a cease-and-desist order, alone, would be inadequate to remedy the Respondent's withdrawal of recognition and refusal to bargain with the Union because it would allow another challenge to the Union's majority status before the employees had a reasonable time to regroup and bargain with the Respondent through their chosen representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair where the Respondent's unfair labor practices already have given rise to a tainted petition expressing the employees' coerced dissatisfaction with the Union. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.[8]

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the violation in this case.

ORDER

The Respondent, Bentonite Performance Minerals, LLC, a Product and Service Line of Halliburton Energy Services, Inc., Colony, Wyoming, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating its employees to determine their sentiments concerning union representation.

(b) Coercively proposing the idea of decertification petitions.

(c) Soliciting employees, either directly or indirectly, to sign decertification petitions.

(d) Making promises of improved conditions if the Union, International Chemical Workers Union Council/United Food and Commercial Workers Union, CLC, Local 353C, was ousted as their collective-bargaining representative.

(e) Interfering with the Union's right to communicate with the employees it represents.

(f) Withdrawing recognition of the Union as the exclusive collective-bargaining representative of its employees at its Colony, Wyoming operation.

(g) Unilaterally granting wage increases to members of the Colony bargaining unit without first bargaining with the Union.

(h) Unilaterally granting improved vacation benefits, health benefits, retirement benefits, or any other mandatory bargaining subjects to members of the Colony bargaining unit without first bargaining with the Union.

(i) Refusing to provide the Union with the information it has requested that is relevant to collective bargaining.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively in good faith with the Union in the following appropriate bargaining unit:

> All production and maintenance employees, including employees temporarily assigned as watchmen, in Respondent's mining, milling and packing operations located near Colony, Wyoming, but excluding office and clerical employees, weigh masters, laboratory technicians, watchmen, foremen and supervisory employees.

(b) On the Union's request, rescind the unilateral changes and restore the previously existing wages and other terms and conditions of employment as they existed prior to July 13, 2007, and make unit employees and former unit employees whole for any losses suffered as a result of those unilateral changes, and for any expenses they may have incurred as a result of the Respondent's failure to make the required payments into the employee retirement, health care, and 401(k) plans in the manner described in the amended remedy section of this Decision. However, nothing in this Order shall be construed as requiring the Respondent to rescind any benefit previously granted unless the Union requests such action.

[8] *Parkwood,* supra, 347 NLRB at 977; see also *Goya Foods of Florida,* 347 NLRB 1118, 1123 (2006); *Smoke House Restaurant,* 347 NLRB 192, 194 (2006).

(c) Reimburse, to the extent applicable, the employee retirement, health care, and 401(k) plans, with interest, for unpaid contributions to those plans in the manner described in the amended remedy section of this decision.

(d) Furnish to the Union in a timely manner the information requested by it on July 19 and 23, 2007.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay and other moneys due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its mining and milling operation near Colony, Wyoming, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 27 after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 9, 2008.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate you to determine your sentiments concerning union representation.

WE WILL NOT coercively propose the idea of decertification petitions.

WE WILL NOT solicit you, either directly or indirectly, to sign decertification petitions.

WE WILL NOT make promises of improved conditions if the Union, International Chemical Workers Union Council/United Food and Commercial Workers Union, CLC, Local 353C, was ousted as your collective-bargaining representative.

WE WILL NOT interfere with the Union's right to communicate with you.

WE WILL NOT withdraw recognition of the Union as the exclusive collective-bargaining representative of our employees at our Colony, Wyoming operation.

WE WILL NOT unilaterally grant wage increases to members of our Colony bargaining unit without first bargaining with the Union.

WE WILL NOT unilaterally grant improved vacation benefits, health benefits, retirement benefits, or any other mandatory bargaining subjects to members of our Colony bargaining unit without first bargaining with the Union.

WE WILL NOT refuse to provide the Union with the information it has requested that is relevant to collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act and which are enumerated above.

WE WILL, on request, recognize and bargain collectively in good faith with the Union in the following appropriate bargaining unit:

> All production and maintenance employees, including employees temporarily assigned as watchmen, at our mining, milling and packing operations located near Colony, Wyoming, but excluding office and clerical employees, weigh masters, laboratory technicians, watchmen, foremen and supervisory employees.

WE WILL, on the Union's request, rescind the unilateral changes and restore the previously existing wages and other terms and conditions of employment as they existed prior to July 13, 2007, and WE WILL make you whole, with interest, for any losses suffered as a result of those unilateral changes, and for any expenses you may have incurred because of our failure to make the required contributions to the employee retirement, health care, and 401(k) plans.

WE WILL reimburse the employee retirement, health care, and 401(k) plans, for all unpaid contributions, with interest.

WE WILL furnish to the Union in a timely manner the information requested by it on July 19 and 23, 2007.

BENTONITE PERFORMANCE MINERALS, LLC, A PRODUCT AND SERVICE LINE OF HALLIBURTON ENERGY SERVICES, INC.

Nancy S. Brandt and *Isabel C. Acosta,* for the General Counsel.
Howard S. Linzy (The Kullman Firm), of New Orleans, Louisiana, for the Respondent.
Robert W. Lowrey, of Akron, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried before me for 7 days in Belle Fourche, South Dakota, December 18–21, 2007, and January 23–25, 2008. The hearing was pursuant to an amended consolidated complaint issued on December 3, 2007,[1] by the Regional Director for Region 27 of the National Labor Relations Board (the Board). The complaint is based upon unfair labor practice charges filed by International Chemical Workers Union Council/United Food and Commercial Workers Union, CLC, Local 353C (the Union) on August 16, November 2 and 26. It alleges that Bentonite Performance Minerals, LLC, a Product and Service Line of Halliburton Energy Services, Inc. (Respondent) has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent denies the allegations.

The issues presented here are relatively simple. The complaint asserts that Respondent induced its employees into repudiating the Union as their representative. In the course of this campaign, Respondent is alleged to have coercively interrogated its employees, promised them benefits and induced them to create disaffection petitions. The complaint goes on to assert that Respondent improperly utilized the results of those disaffection petitions to justify withdrawing recognition of the Union and following the withdrawal made unlawful unilateral changes in the employees' wages and working conditions. As will be seen, the disaffection solicitation occurred over a period of 4 days in July 2007.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. All parties have filed briefs which have been carefully considered. Based upon the entire record of the case, as well as my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Delaware corporation with operations near Colony, Wyoming,[2] where it mines and processes bentonite, a mineral used in petroleum extraction. In the course of its operations at Colony, it annually sells and ships its products valued in excess of $50,000 directly to points outside Wyoming. Accordingly, it has admitted, and I find it to be an employer engaged in commerce within the meaning Section 2(2), (6), and (7) of the Act. In addition, it has admitted the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND AND INTRODUCTION TO THE ISSUES

Bentonite is a type of clay which is used as a component of drilling mud; it also has a large number of other commercial uses. The Colony plant strip-mines the mineral at various locations within easy reach of that facility. It is then hauled to the plant where it is dried, milled, packed in various formats, and shipped by both truck and rail. Colony is remote, located in the extreme northeast corner of Wyoming. The nearest town is Belle Fourche, South Dakota, about 20 miles southeast. Most of Respondent's employees live in Belle Fourche, though some live in Spearfish, Sturgis, or other nearby communities. They can get to work by driving to Colony themselves or ride the shift van from a parking lot in Belle Fourche. The plant currently operates 7 days a week, with four rotating shifts, three shifts on and the fourth off. On Wednesdays, the shifts are rotated, beginning with a new swing shift. The day and swing shifts have 1 day off each week; the graveyard shift 2 days off.

The Colony operation consists of administrative offices, the processing plant, a packing location, and a warehouse/shipping facility, as well as areas for the Boragel and Baramix product lines. From Colony it also directs the exploration for new mineral sites (through crews known as drillers) and the strip mining itself. These field employees, as they are known, work 10-hour days, taking advantage of the early daylight hours.

In 1948 the Union (through predecessors) was certified as the exclusive collective-bargaining representative of the Colony

[1] All dates are 2007, unless otherwise noted.

[2] The record shows Respondent has another mine and plant in Lovell, Wyoming. It may operate facilities at other sites as well. Locations other than Colony are not at issue here.

employees in a production and maintenance bargaining unit, then operated by a predecessor. Halliburton acquired the company from Dresser Industries in 1998. The most recent collective-bargaining contract, having a term of 6 years, was signed in October 2001 and was set to expire on October 21, 2007. Events beginning on July 9, 4 months prior to that expiration date, are the subject of this complaint.

As of the week of July 9, according to a stipulation, there were 69 employees in the Colony bargaining unit. The Colony managerial staff at that time consisted of Senior Plant Manager Mike Houston, Plant Manager Danny Oaks, and Production Manager Ray Dell. Supervisors who were involved here include Lyle Droppers and Gerry Bergum.[3]

III. PRINCIPAL FACTS

A. The AmericInn Meeting; Monday, July 9

Ostensibly to prepare for the upcoming negotiations with the Union which were anticipated to begin some time before the October 21 expiration date, Respondent called a meeting of its Colony management and some advisors from elsewhere within the Halliburton system. The meeting was held at the largest hotel/motel in Belle Fourche, the AmericInn, on July 9. The three from Colony were Houston, Oaks, and Dell. Other people attending were Howard Linzy, Respondent's attorney (and representative in this matter); Nora Polanis (described as a "super paralegal");[4] Pat Goen, a records administrator from Wyoming; and Ed Stanworth, from Halliburton's Denver office. Two others participated by telephone from their offices in Texas, Monica Thurman and Steve Gray. An earlier meeting had been held in May involving the same participants.

At the May meeting, according to Oaks, he had requested a sheet comparing employee benefits under the collective-bargaining contract with the benefits of employees who were not working under that contract. Such a document was presented during the July 9 meeting. This document, and an identical one on which Oaks wrote some additional material, became a significant tool in the disaffection solicitation which began that evening.

During the meeting, according to Houston, Dell commented that he was aware that a number of the employees were unhappy with the Union and wanted to get rid of it. Dell asserted that he had advised those employees, apparently over a long period time, that he didn't know how to get rid of the Union, but that if he ever learned he would tell them. According to Houston, Thurman responded by telling the group that to get rid of the Union: ". . . . [T]he employees could pass a petition, and that the petition needed to say something as simple as 'I don't want a union' or 'I don't want the Union,' and that on the petition they needed to sign, print, and date their—sign their name, print their name, and mark the date."

Thurman's remark allegedly triggered a flurry of activity.

Oaks testified that the meeting shifted from negotiation preparations to the prospect of decertification. In addition, the participants began discussing the time frame in which that could happen, concluding that the timing "was right."

The first thing that happened was that Shift Supervisor Gerry Bergum was summoned to the meeting, arriving about 2 p.m. He had been called because his swing shift was scheduled to begin work at 4 p.m. Oaks gave Bergum a copy of the benefit comparison chart. Later that evening at the Boragel station, Bergum gave it, or a copy, to bag handler John Preisner, saying that he wanted the employees to have everything that Halliburton had to offer. Preisner had worked for Respondent for a little over a year. Preisner testified: "He [Bergum] asked me what I felt about the Union. And I said I didn't care if it stayed or went at that time. And he asked me if I would sign a petition to get the Union out, and I said, yes, that I would. And he told me what to write on the paper, 'I do not want the Union.' And then he had me sign it, date it, and print my name on it." Bergum does not disagree with Preisner on the point. He does assert that he did not show Preisner the comparison chart until after Preisner had created and signed the petition sheet. He also says Preisner took the signed sheet with him and he does not know what happened to it.[5]

Similarly, Dell decided to leave the meeting at about 4 p.m. His purpose was to go to the parking lot in Belle Fourche to meet the shift van in order to meet with Dan McGinnis, who was getting off shift. Dell explained, "[B]ecause knowing of his dissatisfaction, the timing was right. I learned that the timing was right that I could now share this information with him. There was something he could do about it now." He further

[3] The other shift supervisors were Donnie Staley and Lawrence Wattier. The mining crew supervisor was Martin Stroschein. The drillers reported to a mining engineer, Joel Severin There was also a maintenance foreman, not involved here.

[4] Polanis assisted Linzy during the hearing.

[5] Bergum's testimony:

[WITNESS BERGUM] I went over to check off the truck for him, which is standard procedure. When we were done we went into Boragel there and I told John, I said, "We've conversed before about the union John, and you've told me you were interesting in getting it out of here, and if you were still interested in doing that this is the time to do it."

Q. Was anyone else present besides you and Mr. Preisner during that conversation?

A. No, sir.

Q. When you made that statement to Mr. Preisner, what did he say?

A. "Yes, I still have the same opinion. I don't feel the union's doing any good for me and I'd like to get it out."

Q. And what, if anything, occurred then?

A. And then he asked, "What do I need to do?"

Q. And what happened next?

A. I said, "If you want to, what you need to do is take a piece of paper, put on the top of it, I do not want the union, sign it, date it, and print your name."

Q. After you said that, what did he say, if anything?

A. He said, "Well, I don't have a piece of paper."

Q. What happened next?

A. Well, there was a piece of paper laying over there on the—we have a little table over there at Boragel where he keeps supplies and stuff, and I said, "Well, here's a piece of paper for you if you want to do this."

Q. What happened next?

A. He took the paper and printed on the top of it, "I do not want the union." Signed his name, printed it, and dated it.

said, "I felt that [McGinnis] would be a good person to approach to see if his sentiments were still the same."

At the parking lot Dell called McGinnis over to his truck. He said, "I know how you felt about the Union the past several years, Dan . . . if you still feel that way, now is the time you can do something about this." When McGinnis asked what to do, Dell told him, "[H]e could circulate a petition." When McGinnis asked what the petition should say, Dell told him to put a heading on it saying he didn't want the Union, to print his name, sign it and date it. [6] McGinnis did not reject the idea and said he would think about it. He also advised Dell that he had been scheduled to go to Kaycee, Wyoming, the following morning as part of the drill crew.

Dell returned to the hotel and reported the outcome of his conversation to the meeting which was still in progress. He told them that McGinnis was scheduled to go to Kaycee in the morning. Oaks responded by telling Dell to call McGinnis and tell him not to go to Kaycee but to meet with Dell at his office instead. Dell made the call and Oaks arranged for McGinnis' trip to be rescheduled for Wednesday.

In the meantime, Bergum had been persuading Preisner as described above. Among other things, Bergum asked Preisner if he could get anyone else to sign the petition. Preisner said he could. Preisner says that Bergum told him not to speak to fellow employees Rick Reid, Glade Lynch, or Jerry Rose, because they would not sign. Bergum also told him that he was going to train him and two other employees, Robert Stack and Jonathan Henderson, that night on a computer training program known as iLearn. While working their way toward those two employees, they came across Will Boggs, the hopper shack worker. Bergum allowed Preisner to enter the hopper shack and speak with Boggs about the petition. Boggs signed it. Some time afterwards, during their evening "dinner" in the breakroom, Bergum collected Preisner, Stack, and Henderson and took them to the office where they spent about 15 minutes being taught how to use the iLearn program.

According to Preisner, at the end of the training session, Bergum got up and announced that Preisner had something to say to them, and left the room. Using the comparison chart given him earlier, Preisner went through it with Stack and Henderson as Preisner attempted to persuade them to sign the petition. A question came up concerning the concept of "cliff vesting." Unable to explain it, Preisner asked Bergum to return. During the course of his explanation, Bergum spoke about the fact that nonunion Halliburton employees enjoyed better vacation benefits and had greater safety boot allowances. Eventually, Stack and Henderson signed the petition. Preisner testified that he gave the signed petition to Bergum.

Both Stack and Henderson corroborated Preisner. Henderson adds that Bergum also explained that families would have better life insurance and long-term disability under the Halliburton plan than the Union could offer. Stack remembered Bergum saying that at another plant (unclear whether it was a Halliburton facility or one run by a competitor) that the employees had gotten a raise when they threw out their union and he thought it "most likely" it would happen at Colony if it went "union free."

Bergum's testimony is not significantly different from that of the three employees. He admits that he gave Preisner the comparison chart Oaks had given him and told Preisner, pointing to the appropriate spots on the chart, "Here's what I get being a nonunion employee, and [what] other Halliburton nonunion employees get, and here is what you get from being in the Union." Bergum does contend that he told Stack and Henderson that he could not guarantee any raises, but he did admit to showing the different benefits per the chart.

I have no difficulty crediting Preisner, Stack, and Henderson where Bergum's version varies from theirs.

B. Signature Solicitation, Tuesday, July 10

As directed the night before, McGinnis[7] reported to Dell's office on Tuesday morning. He recalls Oaks joined them in Dell's office. McGinnis acknowledges that he has never been a proponent of the Union and that his feelings were reasonably well known throughout the plant. Referencing their conversation at the parking lot the evening before, McGinnis asked them ". . . if I was going to go and talk to the people about whether they wanted the Union or not, what did I have to sell them with? What was there? You know, why would somebody just listen to me and say, yeah, I don't want the Union anymore?"

At that point either Dell or Oaks produced the comparison chart. McGinnis says that they did not really discuss its contents and he decided that he would take it home to read it more thoroughly. He left the meeting and went to work.

In addition, McGinnis said Dell told him that if he wanted to get rid of the Union he'd "have to get signatures on this piece of paper saying that people—having them sign and date it, that they did not want the Union."

Dell has a slightly different version, but essentially confirms what McGinnis said. He varies only slightly with the details. Dell testified McGinnis started the conversation by asking how "to go about this Union thing?" It was Dell who called Oaks to assist. He remembers McGinnis raising his long-held issues, a 12-hour day, higher wages, and a 401(k) plan. Dell says they both told McGinnis that they couldn't promise anything, that changes would have to come from above. McGinnis observed that when a nearby competitor, American Colloid, had gone nonunion, its employees had received a pay raise. Dell again said that they were not promising or guaranteeing anything. It should be noted here, that McGinnis, on cross, testified that neither Dell nor Oaks ever mentioned not guaranteeing anything during this conversation. Curiously, Oaks asserts that he never had any conversation with McGinnis where they discussed the need for a petition, essentially denying being in this meeting.

McGinnis did not actually began soliciting signatures until following day, Wednesday July 11, as will be seen below.

[6] The only significant difference between Dell's version and McGinnis' is that McGinnis says that he thought up the language for the petition on his own.

[7] McGinnis had worked, at that time, for Respondent for approximately 10 years, principally in the plant. He had transferred to the drill crew in the spring of 2007. His duties included exploration, but also involved pit preparation, pumping water from the pits and cleaning and repairing cattle guards.

Ivan Bierema is the appointed lead of the drill crew. On Tuesday, about 1 p.m., he was at the field shop some distance away from the main plant. There he encountered McGinnis who showed him the comparison chart. The two had some sort of discussion about its contents. There is no evidence that McGinnis solicited any signature at that point, but it gave Bierema some pause.

About 1:30 p.m., Bierema and one of his crew members, Dick Holdhusen,[8] drove to the plant in a pickup truck in order to deliver some drill samples to the lab. While sitting in the pickup, Senior Plant Manager Mike Houston and Production Manager Ray Dell approached Bierema on the driver's side. Momentarily, Dell went to the passenger side where he spoke with Holdhusen at the same time Houston greeted Bierema.

Bierema testified that Houston asked if they had signed the paper. When Bierema responded he had not, Houston asked why not. Bierema said that he needed to know the dollar amount for the raise before he signed anything. Bierema reports that Houston said that he couldn't say, but as manager he had the "power to do stuff." Bierema agrees that Houston did not promise any specific item, but did say, "It would be better around here."

Holdhusen testified that either he or Bierema asked Houston and Dell if they could provide a dollar amount or salary amount they would get if the Union was voted out. He remembered Houston responding that he didn't know, it was above his head, but Houston then asked if they trusted him. Holdhusen also recalls Dell mentioning a plant in Texas which had given up its union and had gotten a wage increase.

Houston described a conversation similar to that described by Bierema and Holdhusen at the pickup truck, but put it on July 11. He asserts that Bierema asked him about a petition going around and asked Houston if he should sign it. He told Bierema he couldn't tell him whether to sign or not to sign. He asserts that Bierema asked if they would get more money if they got rid of the Union, but he responded that he couldn't guarantee anything "if the Union goes." He says that Bierema asked him if the benefits would change, and he responded, "No, Ivan, I can't promise you anything about any benefits changing." Houston also testified that Holdhusen asked what would happen to his union pension. Houston replied he did not know. He did offer that the employees wouldn't lose their 401(k) if the Union was voted out and he would find out what would happen with the union pension. He also told them that he would be available to answer any questions and they could come see him any time. He denied asking Bierema and Holdhusen if they had signed a petition.

Dell also places the conversation on Wednesday, July 11. Dell recalls the conversation as initially being about hunting, but that it quickly turned to the 401(k) plan and whether it would improve or stay the same. He remembers Holdhusen raised questions about the comparison sheet, which Dell assumes Holdhusen had seen earlier. Dell, somewhat vaguely, testified he told Holdhusen, "[I told him] kind of what, you know, what my program so to speak, what I have and kind of what he has. I just gave him my analogy of the comparison." Dell's lack of specificity here concerns me; it seems evasive when it was not necessary. In any event, Dell remembered Holdhusen asking a question through Bierema: what would they get if they got rid of the Union? Dell says he responded, apparently before Houston did, "Dick, we as supervisors here at the Colony have no, you know, no authority to guarantee anybody anything."

It is clear from these early instances that the comparison chart would play a major role in the effort to oust the Union. In this regard, I make two observations: first, Respondent, pointing to the testimony of its managers at the AmericInn meeting, asserts that the document had been prepared solely for the purpose of preparing for upcoming collective-bargaining negotiations. Second, it is clear from its face that it had no such purpose. It is entitled "Comparison of ESG and Colony Benefits." ESG stands for Energy Services Group, which is a Halliburton designation for a group of companies that fall within its framework. Respondent is one of a number of Halliburton companies which have relatively uniform wages and working conditions. The Colony plant, on the other hand, was different from those other Halliburton subsidiaries in the ESG group, because employees' working conditions and wages were governed by the Union's collective-bargaining contract.

It was certainly valuable for management to know what the existing working conditions were in Colony. It would also have been handy to know what goals management might expect to seek at collective bargaining. What it did not need was a list of items showing how the ESG benefits equaled or exceeded those that the Union had negotiated in the past. The only purpose such a chart with that information could serve would be to persuade employees that union representation was unnecessary and that they would do better off ousting the Union and accepting the ESG standards. It could have had no other purpose. I therefore do not accept that the idea of jettisoning the Union arose due to sudden advice from a Houston-based executive. It was planned in advance—perhaps in May, but possibly earlier.

In any event, it makes little difference whether the Bierema-Holdhusen/Houston-Dell encounter occurred on July 10 or 11. In either case, the comparison sheet had made its rounds to the bargaining unit employees in question. Its very existence was an implied promise that without the Union the ESG benefits would replace what had been lost, and the replacement value exceeded what the Union had been able to negotiate.

Parenthetically, it should be also observed that the comparison sheet was an apples v. oranges circumstance: the Union's negotiated benefits and wages had been established in the contract almost 6 years earlier. Clearly such a long-term had risked that the economic needs of employees might be outrun by economic factors during that time frame. That risk had come to fruition as Respondent had flexibility with its ESG standards which the collective-bargaining contract did not provide, indeed, did not want. In essence, what the comparison chart did was to compare outdated matters with more current ones. Respondent took full advantage of this anomaly.

So even if Houston's testimony is accepted and one were to conclude that Bierema began the conversation as Houston said, by asking if he should sign the petition and if the Union were

[8] Holdhusen recalls the date of the conversation as July 10, because that was his birthday.

ousted could they expect better conditions, the whole conversation was triggered much as planned. The purpose of the chart was to spark this very discussion.

However, given Houston's other behavior, described below, it is difficult to accept his version over that of Bierema and Holdhusen. Houston was directly involved in the solicitation of signatures from other employees. This was a similar appeal, perhaps more indirect, but nonetheless a solicitation. In addition, the conversation may be characterized as a subtle interrogation of the two employees to determine whether or not they had signed a petition. If they had, no further action was needed. If they had not, additional effort could be seen to be needed. That is why Houston concluded with his offer to make himself available to answer any questions that the two might have had.

There is also testimony that McGinnis had begun soliciting signatures that day,[9] despite his initial hesitation, and his acknowledgement that he actually began the next day, Wednesday, July 11. As with the Bierema-Holdhusen/Houston-Dell encounter, there is some disagreement concerning the date he started. Nevertheless, McGinnis testified that he did not go to Kaycee until Thursday, July 12. Moreover, all of the signatures he solicited [Jt. Exh. 2, p. 3] are dated July 11.

It is fair to say, therefore, that the bulk of the signatures was solicited between Wednesday, July 11, and most of Thursday, July 12. I therefore proceed to Wednesday.

C. Signature Solicitation, Wednesday, July 11

On July 11, four employees began soliciting signatures on home-made petitions. These were Daniel McGinnis, Brad Kirksey, Jeffrey Westland, and Martin Brosnahan.

Daniel McGinnis. McGinnis, noted above, had not immediately accepted the Dell/Oaks suggestion that he begin soliciting disaffection petitions from his fellows. But, he said, on Wednesday he met again with both Dell and Oaks and engaged in another discussion concerning the issues that bothered him most. These were his desire for a 12-hour shift and a pay increase. During this conversation, McGinnis says Dell told him the company would not be able to guarantee him anything, repeating it several times. Nevertheless, the comparison chart was at work and McGinnis, reasonably, came to believe that if the Union was removed, the ESG conditions set forth in the chart would prevail. As a result, he agreed to begin soliciting. He remembers Dell giving him a blank notebook to use to obtain signatures.

Dell testified that the Wednesday morning meeting described by McGinnis did not occur. He testified that the only meeting he had with McGinnis was on Tuesday, July 10. Oaks would not even agree with Dell that he had met with McGinnis on Tuesday, though Dell had called him to the meeting. He denied ever meeting with McGinnis concerning disaffection petitions. Both of these denials are entirely unpersuasive and are not credited. McGinnis had been kept in Colony for the specific purpose of soliciting such petitions. Both Dell and Oaks were entirely confident that he would do so. McGinnis' 1-day hesitation only amplified the need to put him to work on Wednesday to solicit the needed signatures. If Dell and Oaks did not want him soliciting, they would have permitted him to go to Kaycee on Tuesday as originally planned.

After the meeting on Wednesday morning, according to McGinnis, he changed his clothes and began the solicitation process. His work is set forth in Joint Exhibit 2, page 3. The petition is typical of all of them. It is homemade and headed with "I do not want a Union." He was the first to sign it. Two other employees, Keith Baker and Vern Keegan, printed their names and dated it, but failed to sign. Four others, John Deighton, Jesse Bosch, Brandon Ozuna, and Chico Priewe printed, signed and dated McGinnis' petition. Deighton, Bosch, and Ozuna are all plant employees. Indeed, so are Baker and Keegan. McGinnis, whose duties were in the field as part of the drill crew, testified that he spent 2 to 3 hours in the plant that day attempting to persuade employees to sign. He showed them the comparison chart, let them review it, pointed out the advantages of the nonunion benefits and took the signatures of those who would sign.

During the course of his rounds he discovered other individuals were also soliciting signatures. As a result, he went back to the office and spoke with either Dell or Oaks who told him to go into the field, that the strippers were about to take their break. McGinnis did so and was able to persuade Priewe to sign. He says he attempted to persuade the remainder of the mining crew to sign but they declined.

It was here that Bevier remembered seeing McGinnis soliciting the signatures. As noted above, Bevier misplaced the incident as being on Tuesday. Nevertheless, he knows McGinnis had a tablet and the comparison chart. Bevier even saw Priewe sign McGinnis' petition.

McGinnis says his lack of success in persuading other stripping crew members to sign was because he could not answer some of their questions. When he returned to the plant, he spoke to Houston and asked if he would answer them. As a result, later that day both he and Houston returned to the mining location. Houston, however, denies the incident, even asserting that McGinnis had already gone to Kaycee earlier that afternoon.

A number of the stripping crew corroborate McGinnis, including Bevier. Mining employee Kenneth Merrell specifically corroborated McGinnis, saying that Houston had come to the mining shack and answered questions about the comparison chart which the crew had asked him. A second mining employee, Frank McKenna concurs.

Earlier Wednesday, both Merrell and McKenna had temporarily been working on a road project which they finished at noon. While they were working on the road that morning, they remember McGinnis coming by and telling them both that "they" were passing around a petition to "vote the Union out." He showed them the comparison chart and urged them to sign his petition. Merrell and McKenna declined, but asked if Houston or someone with knowledge about the items could talk to them about the issues. Finished with the road, they returned to stripping site in the early afternoon. As a result of their encounter with McGinnis, they were not entirely surprised to see

[9] Employee Rick Bevier recalled that he observed McGinnis soliciting on two occasions in the field on July 10. Since all the signatures on his petition are dated July 11, I believe Bevier to have been mistaken regarding the date.

both McGinnis and Houston at the mining shack later that afternoon.

McGinnis testified that after he was through soliciting that day he returned to the plant yard about 4 p.m. He saw Marty Brosnahan there. By then McGinnis had become aware that Brosnahan was soliciting a similar petition and asked Brosnahan to turn his in for him. Brosnahan did, but as the General Counsel observes, it is unclear when Brosnahan actually did so or to whom he gave it. Brosnahan opined that McGinnis may well have given him the petition, but he had no real recollection of the incident. Clearly, at some point, McGinnis' petition was submitted to someone in Colony management.

Brad Kirksey. Kirksey was the solicitor for Joint Exhibit 2, page 4. He has been employed by Respondent since 2004. In July, he was a dryer operator in the plant. By the time he testified, he been promoted to a nonunit a job, laboratory technician. Kirksey said that sometime in either April or May he had asked Ray Dell what they needed to do to get rid of the Union. Dell told him he did not know but said he'd talk to someone and see what Kirksey "could start;" when he found out, he would let Kirksey know. Kirksey cannot recall the date when Dell gave him the answer, but it would appear to be July 10.[10] Kirksey was working the day shift at the dryer when Dell approached him and told him that if Kirksey wanted to get rid of the Union, he could start a petition.

Kirksey remembers starting the petition by asking Ray Dell's son, Jeff, to help him with the language. He testified that his own handwriting is illegible, so he asked Jeff Dell to write it for him. The original wording was "Petition to Remove the Union from BPM Minerals LLC Plant in Colony, WY." Kirksey's was the first signature; Jeff Dell was the second. Both signatures are dated July 11. At some point someone told Kirksey that the wording was wrong and needed to be changed. As a result, he and Jeff Dell scratched out the original heading and overwrote it with, "We do not want the Union." During the solicitation process Kirksey saw McGinnis using the comparison chart. Kirksey asked for and obtained a copy.

In addition, Kirksey testified that he and two other employees, whose identity he does not remember (one might have been Kevin King, who signed the petition), had a conversation with Mike Houston in the dryer room. They discussed the comparison chart. Houston acknowledges that he had a copy of the chart in his back pocket. In any event they discussed the vacation differences and Kirksey recalls asking Houston a question about the short and long-term disability benefit offered by Respondent for its nonunion employees. Kirksey's testimony:

> Q. (BY MS. ACOSTA) Do you remember what he [Houston] said about it specifically?
>
> A. (Witness Kirksey) He would just—pretty much what the paper said was if we were a non-union you would get this much time of vacation after—the first year you would get I believe it's two weeks, I think it is, and then on down the list, however it was reading.

After Houston departed, the employees remained in the dryer room where they discussed the matter further among themselves. Kirksey said, "I told them some of the benefits they could get of being non-union and what they were losing as being in a union." On cross he was asked what topics he discussed with his coworkers. He reconfirmed: "The more [sic] of the topics were the non-union benefits."

After the discussion ended, his coworkers signed the petition. The three additional employees who signed the petition were Joseph Bohm, Kevin King, and Terry Samples. Other individuals also started to sign, but for the most part their names are illegible, having been marked over. Another, Jamie Sexton, signed, but did not print or date his name.

Kirksey testified that he took the signed petition home with him that evening. He says he gave it to Ray Dell: "At least four days after I started [collecting signatures] I probably turned it in." This testimony suggests that Respondent's management did not possess Kirksey's petition at the time it says it counted the signatures on July 12 at midday, for the earliest Kirksey could have turned it in would have been Friday, July 13.

Dell, however, says that Kirksey came to him during the midmorning of July 12 asking what he should do with his petition. Dell asked him to wait for moment while he went up to the lab and when he returned Kirksey took the petition out of his back pocket and gave it to him. Dell told Kirksey that he would get it to Oaks.

Jeffrey Westland. Westland has worked for Respondent since 1993. He is currently the leadman for Lyle Droppers' crew and serves as the crew's shuttle driver. As noted above, Droppers' crew began work on July 11 at 3:30 p.m. He remembers Dell called him to Dell's office when he arrived for work. He testified:

> Q. [BY MS. ACOSTA] What happened when you went in his office?
>
> A. [WITNESS WESTLAND] He asked me if I heard that the employees were not happy with the union, and if I would take a petition down and have the guys on my crew sign it.
>
> Q. And did you respond?
>
> A. I said, yeah.
>
> Q. And what happened after you said yes?
>
> A. He just showed me a sheet of the difference between the hourly employees—the union employees and the salary employees, what the benefits were. Vacations, insurance, and different things. [Referring to the comparison chart.]

Westland said that Oaks joined them about that point and the discussion continued:

> A. [WITNESS WESTLAND] Danny Oaks. Come in and helped him [Dell] explain what we got if we didn't have the union.
>
> Q. Did they tell you why they were explaining it?
>
> A. Well, so I could explain it to my guys on my packing crew so they would understand what was going on.

[10] Dell places the first conversation as occurring on the Thursday before the AmericInn meeting, meaning July 5. Houston remembers Dell telling the group at the hotel that he had spoken to Kirksey several months earlier about his dissatisfaction with the Union.

What kind of benefits they would be getting compared to what they had now.

Q. Did they explain to you what you needed to do?

[Objection Interposed.]

THE WITNESS: Yeah. They had just asked if I'd get the petition signed. They just explained me the benefits and how to get the petition. They needed them to print their name, sign their name, and date it, so it'd be official.

Westland later said that Dell and Oaks had told him they did not know for sure what would happen after the Union was gone but hopefully, everyone would be on the same plan. Although the timing of Westland's response to the question is not entirely clear, he responded to the initial question concerning whether he would try to get his crew to sign the petitions, that he would see what the employees actually had to say.

Westland left the office in time for the safety huddle conducted by Droppers. Shortly after that, Westland had a huddle of his own with the rest of the packing crew. Westland went over the comparison chart with his group. He said that most of the packers were asking about the vacation issue, apparently intrigued, because it was more generous than the plan under the collective-bargaining contract. Sometime during this discussion, Droppers came by and told Westland to take as much time as he needed because he didn't want Westland running after people to try to get them to sign.

Droppers agrees that he left the group alone because he was under instructions not to get involved. Even so, he said someone asked him what he would do if it was up to him. He responded, ". . . knowing what I have for benefits and what you have for benefits, I would sign that document in a heartbeat."

A short time after that, Houston appeared and asked if the employees had questions. He, too, compared his benefits with those under the contract.

After Houston left, the packing crew signed the petition. Once they had signed, Westland then solicited other employees in the plant, including the hopper operator, the dryer operator, the mill operator, and the Baramix operator. He later delivered his petition, in evidence as Joint Exhibit 2, page 2, to Houston in his office. When he did so, Houston asked him to change the wording from "We are opposed to the Union at Colony" to "We do not want the Union."[11]

D. Supervisory Solicitation: Foreman Lyle Droppers

As noted above, Lyle Droppers is a plant foreman and admitted supervisor. At 4 p.m. on July 11 he had a conversation with Zackary Zupan, one of the dryer operators. At the end of the preshift meeting, Zupan asked Droppers if there was a petition going around as he had heard rumors from other employees. Droppers replied that he was aware that Jeff Westland was circulating such a petition and took Zupan to the warehouse where Droppers picked up a comparison chart sitting on a table near the tail rollers of the palletizer. He gave it to Zupan to read. Zupan perused it as they were returning to the dryer room. Zupan asked Droppers some questions regarding the differences between what they would be given without the Union as opposed to what they were now getting. He remembered Droppers said the employees would get a greater vacation benefit. He also remembered asking Droppers why the Company couldn't give them the benefits on the chart through negotiations. Droppers answered, "Because it wasn't offered to union plants." When Zupan asked why not, Droppers could only reply, "They just don't."

They then had a discussion concerning the number of union plants Halliburton operated as opposed to nonunion plants. Zupan also recalls Droppers saying that if they got rid of the Union at Colony, the employees would most likely receive everything on the comparison sheet: "This is what the Company [is] offering." Droppers asked Zupan if he was interested in signing the petition, but Zupan replied that he was not.

Droppers denies that the conversation Zupan described ever occurred. He offered an alternative version that occurred during the luncheon break where Zupan and two other employees had a conversation with him concerning short-term disability and vacation benefits. Droppers told them he had done really well under the ESG plan because he had invoked it after being injured. He does agree that he told the group that the Company plan "would affect a lot of the newer employees because [under] the union scheduling they get one week vacation after the first year and then two weeks after the second year, where what the salary people were getting we have two weeks after the first year."

I credit Zupan over Droppers. Zupan's detailed testimony was impressive, whereas Droppers' denial and alternative version did not seem to carry with it a sense of veracity. Even so, his alternative version is consistent with the promises being implied from the comparison chart. Accordingly, I find that Droppers engaged in the direct solicitation of Zupan's signature on a disaffection petition.

About two hours after his conversation with Zupan, Droppers encountered Thomas (T.J.) Davis, the mill operator in the sample room. Davis remembers he had been working alone and Droppers had come into the sample room and was talking about how the Company was trying to get rid of the Union. Davis was already somewhat familiar with what was happening due to an earlier conversation he had had with Marty Brosnahan, the plant electrician.

Davis responded to Droppers's comments by asking him what the Company would give the employees, what was going to change if the employees got rid of the Union? Droppers replied he needed to get a copy of the paper from Westland so he could show it to Davis. Once the comparison chart had been obtained, Droppers explained to Davis that the short-term disability benefit was far better than anything in the union contract, that if he had missed work because of such a disability he would get full pay for up to 26 weeks. Shortly after Droppers left, Westland approached Davis and asked him to sign his petition.

Droppers agreed that he had a similar conversation with Davis but said that the discussion about short-term disability

[11] Dell does not specifically deny Westland's testimony concerning the meeting in Dell's office, saying he did not recall it, but instead described a different conversation at the palletizer in which Westland supposedly initiated a conversation concerning the comparison chart. Clearly Westland's recollection about the incident is superior to Dell's, since Dell "could not recall."

had been initiated by Davis. He did acknowledge telling Davis "if the Company is going to offer it, yes, you would be better off." He denied that he had to go get the comparison chart from another location, saying a copy of it was there in the sample room.

Again, I credit the employee, Davis, over Droppers. Droppers' presence in the sample room together with the comparison chart was not simply fortuitous. It was a direct effort to persuade Davis to sign a disaffection petition. Furthermore, even though Droppers did not specifically ask Davis to sign a petition, as he did with Zupan, Westland's immediate appearance after Droppers left the sample room was not chance. It is fair to conclude that immediately after trying to convince Davis that the nonunion benefits were superior, that he sent Westland to serve as a "closer."

Here, too, Droppers was engaged in the solicitation of employee to sign a disaffection petition. That he did not utter the magic words is not a defense. He schemed so that Westland could obtain Davis' signature.

E. Signature Solicitation, Thursday, July 12

Martin (Marty) Brosnahan. Brosnahan has worked for Respondent since February 2004. Initially, he was a maintenance electrician and held that job in July 2007. At the time of the hearing he had become Respondent's health, safety and environment manager (HSE), a managerial job outside the bargaining unit.

Brosnahan readily agrees that he circulated disaffection petitions and solicited fellow employees to sign them. The record shows that he obtained 15 signatures on July 12. Those petitions are in evidence as Joint Exhibit 2, pages 7–9 and 11–14.

Brosnahan's testimony was significantly marred by his inability to recall with any detail how he came to be a solicitor. It will be recalled that on the evening before, he had accepted McGinnis' petitions with an apparent promise to deliver them to Houston. At some point he came into possession of the comparison chart. He testified variously that McGinnis had given him one (he retracted that contention), that it had "somehow" come into his possession, and that Houston may also have given him a copy, though he said he wasn't sure if Houston had. It seems to me, as he was testifying, that he was attempting to protect Houston from being exposed as being heavily involved in the disaffection effort. It really doesn't matter much to this analysis because once he reviewed the comparison chart, he was hooked:

> Q. BY MS. BRANDT: What was the reason you signed the petition?
>
> A. [WITNESS BROSNAHAN]: I signed the petition for the pension purpose only. You know, the—
>
> Q. Take your time. If you'd like to help yourself to a bottle of water—
>
> A. No, not yet.
>
> Q. —feel free to.
>
> A. Not yet. I stutter, so—but anyway, I signed it for the percentage benefit that they were going to give us. And that's why I signed it.
>
> Q. Okay. And how did you know you were going to get a different pension percentage?
>
> A. If I remember right—was it in here?
>
> Q. Just take a moment and look through the document.
>
> A. Yes. The fir—the very first one. It's—
>
> JUDGE KENNEDY: And if it's not in the document, you can take a minute to think through where you got that information too. That's—
>
> THE WITNESS: It looks like the first benefit on the first line, or, you know, the fourth column, the first, second—or the fifth box down.
>
> Q. BY MS. BRANDT: So when you saw a document similar to this and it had information about the pension, you made up your mind to sign the petition?
>
> A. That is correct. I made up my mind to sign that petition, that—this petition here, yes.

A review of the comparison chart shows that the first comparison, the one to which Brosnahan referred, was that of retirement benefits. Under "Colony Provisions" (the Union-negotiated plan) there was a 100-percent to 4-percent match, but with a 5-year vesting period. Under (Halliburton's) ESG plan the matching contribution was the same, but there was immediate vesting, plus an additional automatic 4-percent company basic contribution which took 3 years to vest.

Moreover, Brosnahan's perception of what the Company was going to do is clear from his testimony, as he absorbed the face of the document. He looked at it and "knew" that if the Union was gone, it would significantly improve his pension. To him it was a "no brainer"—get rid of the Union and you get a better pension. He recognized the document to be not simply an implied promise, but an explicit promise. He believed it then, and his testimony shows that he believed it at the hearing. Indeed, by that time, he knew it to be true, because Respondent had, well before the hearing, implemented those very benefits. I recognize that Brosnahan, when he testified, was out of the bargaining unit, but it is equally certain that he did not wish to cost his fellow employees the fruits the Union's ouster had brought. The reason for Brosnahan's hesitancy to name Houston as being involved seems relatively transparent. He did not want to return the employees to the lesser benefits he perceived the Union as providing. If Brosnahan implicated Houston in that effort, from his perspective wages and conditions were not likely to remain as good as they had just become—either for him or for his fellows. He had no desire to bring in Houston for that reason; plus, he was grateful to Houston for his recent promotion. Yet, someone had helped Brosnahan to choose the language that appeared on top of the petitions. Brosnahan seemed deliberately vague about the time of day and the locations where he solicited individuals, even contending that he did not sign until after the other "gentlemen" had signed.

The truly curious thing about Brosnahan's solicitation was that he was totally free to roam the plant as well as the field in his effort. And, he was out early the morning of July 12. Kurt Ranta testified he encountered Brosnahan at 7:30 a.m., just as Ranta was coming off his graveyard shift. He said that Brosnahan already had several names on the petition Brosnahan offered him.[12]

[12] Ranta was willing to sign, but only anonymously.

In any event, as an electrician, Brosnahan would normally be called to perform electrical repair work in both places. One thing is clear; he had the comparison chart with him while he solicited the signatures. He also told Vern Keegan, who had signed Kirksey's petition, that Kirksey's had an error in the heading and Keegan needed to sign again. Keegan did so. How did Brosnahan make that judgment?

About an hour before quitting time, perhaps about 3 p.m., Brosnahan and Houston drove in Houston's truck to the stripping site, then located about 3 miles from the plant. Brosnahan asserted that he had gone to Houston to discuss his application for the HSE job and that Houston suggested he come along for the ride so they could. Given the fact that Brosnahan also testified that he delivered many of his petitions to Houston during the day, his explanation seems hollow.

In any event, the two arrived at the mining "shack" and Houston spoke to the crew for few minutes as they were shutting down for the day. Brosnahan says he asked Houston to leave. Still taken with his belief that the ESG pension plan was a very good deal, he attempted to persuade the stripping crew to sign. He also remembers speaking about the vacation issue, but does not recall what he said. He recalls only one employee, Frank McKenna, saying he would sign.

The members of the stripping crew who testified, Bevier, Merrell, and McKenna did not confirm Brosnahan's version. They testified that Houston told them that Brosnahan wanted to meet with them and that Houston would wait outside. They also said that when Houston left, Brosnahan went over the comparison chart, specifically pointing out how the retirement plan would be better for him personally. When they left the shack Houston was still outside and asked if any of them had any questions.

Houston testified that when he arrived he told the crew he was there to answer any questions that they had and then said Brosnahan had asked to talk to the crew. He also said that after Brosnahan was finished he offered to answer any questions the crew might have had.

It is clear to me, and I find, because of Brosnahan's guarded unwillingness to implicate Houston, his delivery on separate occasions of perhaps seven petitions to Houston throughout the morning and early afternoon, coupled with what is Houston's transparent effort to get the crew to sign Brosnahan's petition, that Houston was behind all of Brosnahan's efforts. Even if I were to not reach this conclusion based upon what happened before the mining shack meeting, is clear that Brosnahan was serving as Houston's instrument at the shack.

F. Supervisory Solicitation: Production Manager Ray Dell

Charles Callison has worked for Respondent in a variety of jobs for 23 years. At the time he testified, he had been a loader operator for about 2 years. He said he had been on vacation during the week of July 9.[13] He said that on Wednesday morning he received a telephone call at his home from Ray Dell. This was unusual, as Dell had never before called him at home. Dell told him that a petition was going around to get rid of the Union and he wanted to know if Callison would sign it. Callison said he would. They discussed how he would get the petition to the plant (about 30 miles distant from his house) and Callison advised that he could use his personal fax machine. Callison said they then discussed the language he should use on the petition. Callison: "Well, we discussed what would work as far as me getting my point across to him. And we came up with 'I do not support the Union,' and that's what I faxed."

Callison says he faxed Joint Exhibit 2 page 5 to Dell. Curiously, however, the exhibit does not appear to have been what was received by Respondent. Later that night, about 10:30 p.m., Callison received a call from Plant Manager Danny Oaks. Oaks told Callison he wanted him to resign his name and date the petition. Oakes then drove to Callison's home in Spearfish so he could acquire the re-signed version. He did so and Callison signed something, apparently the original which he had probably kept. Oaks does not have a significantly different version.

Clearly, Callison's signature on the disaffection petition was solicited and obtained by members of management, Ray Dell[14] and Danny Oaks.

David Dell is Ray's brother. Ray testified that his brother, who works in the maintenance department, had been vacationing in a remote location in Wyoming during the week of July 9. He said he knew his brother's sentiments concerning unions—that he's been both pro and con—but at that time was in anti-union mode. As a result, Ray concedes that he "took the liberty" to find out if Dave still felt the same way on July 12. In the middle of that morning Ray reached Dave, apparently by cell phone. He learned that Dave was willing to sign a disaffection petition and he instructed Dave "to get a piece of paper and put a header on it, print your name, sign it, date it, and get it back to me." Dave did so and faxed it, as Ray suggested, to Ray at Colony. It is in evidence as Joint Exhibit 2, page 6. It is headed "I agree with the idea of a non-union plant." Curiously, the document in evidence does not appear to have been faxed but is instead a photocopy of an original.

Whatever the circumstances of the transmittal, Ray Dell readily admitted soliciting his brother, a bargaining unit member, to sign a disaffection petition.

G. Supervisory Solicitation: Senior Plant Manager Mike Houston

Gregory DeKnikker is the plant cleanup man. He has worked for Respondent for a little over 2 years. His principal duty is to clean up around the plant and haul debris to the landfill located on Respondent's property about 1-1/2 miles southeast of the plant. On July 12, DeKnikker was located at the landfill performing his duties when Mike Houston drove up in his personal pickup truck. That was unusual, as the senior plant manager rarely spoke to the individual who performed the operation's most humble tasks, and certainly not at a location as remote as the landfill.

[13] The parties have stipulated that Callison was not scheduled to work from July 4 through 15.

[14] Curiously, Dell testified that when management counted the petition signatures at noon on July 12, they had a photocopy of the original of Callison's petition, not the faxed version.

DeKnikker testified that Houston told him he had learned DeKnikker was interested in looking at the comparison chart. Houston brought it out and placed it on the hood of his truck, allowing DeKnikker to look it over. DeKnikker remembers Houston asking him if any of the things on the chart interested him. The conversation turned to other matters but later returned to the chart and DeKnikker told him that he was interested. Houston obtained some paper from his truck and gave to DeKnikker who wrote on it, "I don't want the Union." He then gave it to Houston.

Houston, however, suggests that his conversation with DeKnikker was essentially by chance. He said he was on his way to meet with the stripping crew and observed the dump truck at the landfill. Because it was a truck which had been recently purchased, he decided to see how well it was working and drove over to discuss it with DeKnikker. He says DeKnikker asked what was going on with the petition, that there were a lot of guys talking about the benefits. Houston asked if DeKnikker had any questions and DeKnikker said he did. As result, Houston took out the comparison chart. Houston testified: "So I said, 'I have a sheet here that you can look at that compares the union benefits versus the nonunion benefits. If you would like to look at that you can.'" Then, Houston said, he started to leave. At that point DeKnikker stopped him and asked if there was anything he could do to get rid of the Union. Houston says he responded: "Yes, there is. All you have to do is sign a petition that you write on the top of it, you say, I don't want a union, print your name, sign your name, and date it." DeKnikker said he would like to sign a petition and Houston helpfully provided him with pen and paper. The petition DeKnikker signed is in evidence as Joint Exhibit 2, page 10.

There is no doubt in my mind that Houston solicited DeKnikker's signature on the disaffection petition. He deliberately sought out DeKnikker who generally worked alone and who was not part of anybody's crew. He was probably the least likely employee to be found by the employee solicitors. He needed special attention, and Houston gave it to him. Once again, the comparison chart had done its work. Even Houston agrees that as soon as he showed DeKnikker the chart, DeKnikker decided it was in his best interest to join the effort to oust the Union.

Morning at the stripping site. I have already discussed Houston's visit to the stripping crew on the afternoon of July 12 when he was accompanied by Brosnahan. However, he had made an earlier visit, perhaps on the same run where he stopped to talk to DeKnikker.

During the morning visit, apparently arriving in time for the coffee break, he spoke with the crew. This was his second solicitation of the crew, though he and McGinnis had been there the night before, with scant success. McGinnis had signed only Priewe on Tuesday morning. The stripping crew was a much tougher sell than the plant employees.

Houston acknowledges that he visited with the stripping crew that morning.[15] His testimony:

> HOUSTON: They said, "Yes, they had some questions in regarding benefits." And they had a copy of—I can't remember if it was—I believe it was GC-3 [the comparison chart] that they had on their—on the table there. And they just started out, "You know, Mike, what's up with all this?" And I said, "Well guys, you know, I can't promise you anything that's on this document." And they had already been approached about signing a petition. And they said, "You know we've been approached to signing a petition to get rid of the union, and received this document. What's going on here?"

So I explained to them that employees were passing around a petition to get rid of the Union, and that I couldn't tell them one way or another what to do. And that if they had questions I could explain to them on the comparison sheet of benefits that I have and other people that are not under the collective-bargaining agreement had, and we could discuss those comparisons.

Houston remembers McKenna asking some questions about what would happen to the current 401(k) plan if the Union were voted out and responding that he did not know, but he would find out. McKenna, Houston says, pressed him about worker's compensation as he had suffered a sprained ankle earlier in the year. Houston says he explained that if he had been under the ESG plan he would have been made whole, but since he was under the union contract, what had been bargained for him was what he got. (The chart shows that the Union had not negotiated anything more than what state legislation provided; it also shows that the ESG benefit supplemented the legislated amount plus a salary supplement so that an injured employee would be reimbursed up to his base salary, i.e., making him whole.)

Two employees, Rick Bevier and Frank McKenna, testified about the morning meeting with Houston.

Bevier said, in effect, that Houston was fairly circumspect in his approach that morning. Bevier remembered asking some questions about whether, if the Union were out, there would still be overtime after 8 hours per day. He remembers Houston saying that he could not comment on that.[16] He also remembered McKenna asking a question about retirement, but couldn't recall Houston's answer. He recalled Randy Wulf asked a question about vacations, but did not recall either the question or the answer. He did remember Houston saying, "[T]he only thing I can—that I can guarantee you is what [is] on the comparison sheet."

McKenna testified about what Houston was doing. He said, "[Houston] just explained the difference in some of these areas, like the health group benefits and different parts of it he explained the difference in what—what the difference would be from what we have, to what we would have." McKenna remembered Houston described the change in the 401(k) plan. According to McKenna, Houston said that the existing plan in which he was contributing 7 percent, if the Union was gone, would cease at the end of the year. At that point, a new plan would begin in which he would contribute the same 7 percent,

[15] The stripping crew members present that morning were Kenny Merrell, Chico Priewe, Frank McKenna, Duane Newlander, Randy Wulf, John Geib, and Rick Bevier.

[16] The chart suggested such a reduction; later, because of concerns about downtime due to climate conditions, Houston said something would be worked out so no wages would be lost.

but the Company would match it up to an additional 4 percent, depending on "how everything went with Halliburton." McKenna also said Houston described the short-term disability benefit saying it was "a new deal and it would be like 26 weeks short-term sickness, which we didn't have."

It is clear to me that even if Houston prefaced his remarks with a disclaimer asserting he wasn't making promises, in fact he was. There is no other way to read the comparison chart. On one side were the Union negotiated terms and on the other side were better terms which seem to be conditioned on not being represented by the Union. Indeed, I do not think that Houston's own testimony can be read any other way. His statement ("Well guys, you know, I can't promise you anything that's on this document"), even if said, was meaningless in the context of the chart plus what the employees have reported he said. On one side were the Union negotiated terms and conditions; on the other side were the benefits of being nonunion. His disclaimer must be discounted as the wink and the nod it was.

William Kester and John Kreitel. During the morning of July 12, maintenance department employees William Kester and John Kreitel were putting in a drainage line at the railroad tracks adjacent to the warehouse building. They encountered Marty Brosnahan and another employee who were working on the electrical rerouting on the same project. Brosnahan asked Kester to sign a petition saying they were putting the petition out to see how many people did not want the Union. Brosnahan also asserted that he had something to show Kester which might convince him that rejecting Union would be a good thing. Kester was reluctant and Brosnahan told him he would have Houston, come talk to him if Kester wanted.

About 3 30 p.m., Houston appeared at the project. At the time Kester was working on a Bobcat while Kreitel was operating a forklift. Kester shut off his machine and stepped down to speak with Houston. Kreitel joined them a few moments later. During the conversation, according to Kester, Houston told them that Halliburton had two companies which were unionized, including Bentonite, and they could provide very well without any union involvement. Houston explained to Kester the Halliburton sick leave policy, saying that he could get up to 26 weeks from his first day in the hospital. This was important to Kester because in May he had been hospitalized with pneumonia and had not been the beneficiary of such a program. There was also some discussion of vacations, but due to Kester's experience level, he remembered that it would not affect him significantly.

Kreitel said that he joined the two after he had moved some pallets. When he joined them Houston was discussing the differences between union and nonunion employees concerning retirement and vacations. He remembered Houston using the comparison chart and that Houston selected particular topics from it. He also remembered that Houston told them that except for the other Halliburton plant which had a union, all the employees under the ESG grouping had all benefits listed under the ESG column. He remembered Houston saying that Kester's retirement had vested and that he asked Kreitel how long he had been employed. When Kreitel said, "4 years," Houston told him he had not been there long enough to have become vested. Kreitel did remember that Houston told him that he was entitled to a third week of vacation after 5 years under the ESG plan, and that under the union plan it would take 10 years to reach that level.

During this conversation they spoke about two other employment connected perquisites, the Star card and the length of service award. The Star card was a type of debit card or gift card which employees who had earned it could use to purchase products. Houston told them that even though the Star card had been used at Colony, it had been phased out because it had not been "contracted for." Similarly, since the collective-bargaining contract did not contain a provision for length of service awards, that too, had been canceled for Colony employees.

Houston made some other comparisons as well. Then Kreitel asked Houston for something in writing with Kreitel's name on it so Kreitel would have proof that what Houston said would not be taken away. Houston declined, saying that "[i]t's all on the paper, right there," indicating the comparison chart. The conversation ended at that point. This was a clear promise of benefits for eliminating the Union. It can be interpreted no other way.

Houston remembers the conversation occurring sometime between 2 and 2:30 p.m. he confirmed that Brosnahan had told him Kester had some questions for him. As a result, he took the comparison chart with him when they spoke. He says Kester asked him in regard to sick leave whether he would "get this," meaning the 26-week period. He says Kester explained that he had been obligated to use vacation time in order to maintain paid status when he had been hospitalized with pneumonia. Houston asserts he said, "Bill, I can't promise you anything about what's on the sheet of paper here. This is what I have, this is what other people that are not under the collective bargaining unit have. No guarantee." He admitted saying that the Stars card program was inapplicable to nonunion facilities, since it had not been bargained for. His statement was: "Well, if you look at the items that are under the [union contract], that's [not] a benefit that you guys are entitled to, so we had to discontinue the program."

With respect to benefits that had been applied to the Colony plant, but which were not part of the collective-bargaining agreement, it is clear that Houston does not understand that existing employment benefits not covered by the union contract cannot lawfully be taken away on unilateral basis. Nonetheless that is exactly what he told Kester and Kreitel.

After his discussion with Houston, Kester sought out Brosnahan and signed a disaffection petition.

H. Withdrawal of Recognition and Unilateral Changes

In its answer Respondent has admitted that it withdrew recognition of the Union on July 13 and since that date has failed to respond to the Union's request to bargain collectively for the purpose of negotiating a new collective-bargaining agreement. It is further undisputed that it withdrew recognition based upon its claim that the Union had lost majority status. In this regard, on July 13 Respondent, through Oaks, e-mailed and faxed a letter to the Chemical Workers Union Representative Arthur Stevens in Topeka, Kansas, announcing that it was withdrawing

recognition because the Union had lost majority status. Curiously, Oaks also acknowledged that the collective-bargaining contract was still in effect and that Respondent would abide by the terms of the contract "to the extent consistent with the withdrawal of recognition."

Although Respondent's answer denies that it made unilateral changes in the terms and conditions of the employees after July 13, the denial is essentially without force as it actually admits making the changes alleged in the complaint.

More specifically, on July 19, Houston and Oaks strongly suggested to the employees that they not attend a union meeting to be held at Herrmann Park in Belle Fourche. They advised the employees "the less you have to do with [union official Art Stevens] and the Union, the better all of us are. . . . We are in the process of making good things happen. A wage increase announced Monday and more good things to come. In our opinion, Mr. Stevens had his chance and now we ask you to give us and Halliburton a chance. . . . If [Stevens] stirs up trouble then everything could come to a halt—more union outsiders could bother us, Halliburton would have to get its corporate people, lawyers could come from everywhere. And, we could find ourselves stopped dead in our tracks . . . . If you go to the meeting, that is your right and choice. For our part, our advice is: don't go—that's the best way to tell Mr. Stevens not to get in the way of progress."

At the meeting, Stevens was able to persuade about 18 employees to sign a petition in favor of continued union representation. Two more employees also signed separately on July 18. Over the next few days, 20 employees added their names, for a total of 40. Of these 40, 14 had signed a disaffection petition.

On August 10, Stevens asserted by letter that the Union continued to enjoy majority status and offered to prove it through a signature check by a neutral person. Oaks responded by letter of August 15 rejecting Stevens' offer and asserting that it had proven that the employees no longer wished representation by the Charging Party. Indeed, Respondent argues here that once the Union had lost majority status as of a midday count supposedly held on July 12, no further inquiry was necessary into the Union's majority status.

In any event, immediately after withdrawing recognition, Respondent began making changes, some of which appeared in the chart and also added some additional matters to the terms and conditions of employment at Colony. The first was a notice from Houston and Oaks on July 16 announcing an across-the-Board wage increase of $1.25 per hour.

By letter dated July 19, Union Representative Stevens asked Oaks four questions: who gets this wage increase? How long would be in effect? Is the Company asking bargaining unit members to give up anything for the increase, i.e., were there trade-offs? He concluded by asking for the reasoning behind the "welcomed, but unprecedented wage increase this close to our impending negotiations for a new collective bargaining agreement."

On July 25, Oaks responded by letter which can only be described as gloating. In his first sentences he told Stevens:

> You are absolutely correct when you say that the $1.25 per hour wage increase was UNPRECEDENTED! To my knowledge, the wage increase was about 100% LARGER than any increase your union has ever negotiated for our employees in any one year. We have also just announced an unprecedented increase in the men's vacation policy and will soon be meeting with them to explain that new benefit to each one of them.
>
> THESE ARE UNPRECEDENTED WAGE AND BENEFITS CHANGES WHICH OCCURRED DIRECTLY AS A RESULT OF THEIR DECISION TO GIVE US AND THEM A CHANCE TO SEE WHAT BEING UNION FREE COULD MEAN.

The wage increase and better vacation benefits came months before anything could have happened by bargaining with the union. And, if history is any judge, those wages and better benefits came YEARS before anything could have happened by being represented by your union.

Oaks concluded with three paragraphs in which he claimed that a clear majority of its employees had told them that they no longer wished to be represented by the Union and downplayed a July 18 grievance which the Union had filed protesting the withdrawal of recognition. Indeed, he accuses Stevens of "ignoring the will of the majority." He said that the Company no longer recognizes the Union and would not communicate with Stevens further concerning employees' wages, benefits, and working conditions. He even asserted that the letter itself was "only a courtesy to you." Finally, he said, "Art, we—the Company, the supervisors and the men—work together every day. Personally, I am here with them virtually every day. To my knowledge, you have not been present except for two times in five years! The men deserve a chance to see what we and they can do together to make more progress and improvements. Do not stand in the way."

Consistent with that letter, Respondent almost immediately notified the employees of their improved vacation benefits in an undated notice. Once again, this change was consistent with the ESG benefits described in the comparison chart. The notice also stated that the Company would stop withholding union dues when the contract expired in October. It advised that employees could resign their membership earlier if they chose by sending a resignation letter to the Union with a copy to the Company, noting that Wyoming is a right-to-work State.

At some point, shortly before July 27, the Union submitted some dues-checkoff authorization forms for four employees which were dated in July, three after the withdrawal of recognition and one before. On July 27, Oaks wrote Stevens advising that the Company would process the forms but would not modify the withdrawal of recognition. It would appear that the letter was intended as a summary compliance with the dues-deduction authorization clause of the contract, but that compliance would end with the contract's expiration.

In August, there was an exchange of correspondence in which the Union requested a neutral observer review the employees' signatures; Respondent preferred as a starting point proving the loss of majority status. This exchange led nowhere. On August 20, Oaks wrote Stevens giving notice of cancellation of the contract effective on the date of its expiration.

After the contract expired on October 21, Respondent began making additional changes. On October 15 it announced it was

amending the retirement plan effective December 1 by ceasing future benefit accruals; it explained that a participant's benefits would be frozen at the level determined as of December 1. This was the plan that had been negotiated with the Union.

It also began taking steps to terminate the 401(k) plan which the Union had negotiated. On October 25, it issued a notice requesting instructions concerning what to do with the funds which had been accumulated under that plan. Almost simultaneously it welcomed employees to the Halliburton Retirement and Savings Plan and automatically enrolled them in it (subject to an opt-out option).

In addition, Respondent also began requiring all its Colony employees to acknowledge that they were now bound by Halliburton's Dispute Resolution Program. An exemplar is in evidence as Joint Exhibit 17. This requirement was short-lived as on December 13 it revoked that requirement.

I. The Demands for Information

There is really no dispute concerning the allegations concerning information requests. Indeed, Respondent has admitted the allegations. The Union's letters of July 19 and 23 are in evidence. The July 19 letter has been discussed in passing above and will not be repeated here. The July 23 letter, also styled as a 60-day notice to modify the collective-bargaining contract, made additional information demands. By an attachment to that letter Stevens set forth 24 items about which he needed information. Of those 24 items, only one, item 4, can be said to be unrelated to wages, hours, and terms and conditions of employment. That was a request for the names and positions of each management or salaried employee who made the determination of the hourly wage increase of $1.25 per hour as announced on July 16.

IV. ANALYSIS AND CONCLUSIONS

At this stage, a short review of the complaint's allegations is appropriate. First, is an overview. Generally, the complaint alleges that Respondent embarked upon a campaign to oust the Union which had represented its employees since 1948. It did this, urges the complaint, by inducing employees to abandon union representation through interrogations and promises of benefit. In this way, Respondent was able to determine who was and who was not susceptible to its overtures. Then, it made promises of change for the better by providing the comparison chart.

That chart was unfair from the outset. Presumably, Respondent had obtained a significant benefit from the 6-year contract, labor peace and a lengthy period of economic certainty. Despite that, it decided to compare its current financial well being with a 6-year old, out-run, collective-bargaining contract which was about to expire. No doubt, if the contract had been renegotiated, whatever currency Respondent had been able to provide its unrepresented employees would have caught the attention of the Union and it would have sought to benefit from at least the same level of benefits Respondent was providing to its employees outside the bargaining unit.

Moreover, I have already concluded that Respondent's behavior during these 4 days was not the result of happenstance. It was a result of a plan begun in May at the very least. Oaks' testimony that he sought a comparison chart for the purpose of educating himself concerning negotiations makes no sense. It makes sense only in the context of instigating a revolt against union representation. Indeed, all the conduct described in the facts section of the decision is tethered to that aim. Accordingly, I find that Respondent's conduct here was aimed at the heart of the Act. It was a clear manipulation of its employees for selfish purposes, undermining their Section 7 rights. In general, I find that each of the allegations of Section 8(a)(1) of the complaint has been proven. In this regard, Shift Supervisor Gerry Bergum's questions of John Preisner were clearly coercive under that section of the Act. Preisner's own feelings for the Union were ambivalent and he would have done nothing at all had Bergum not solicited him to create a disaffection petition. Similarly, Bergum urged Preisner to solicit others, using the comparison sheet. This was not something Preisner would have done on his own.

Ray Dell's meeting Dan McGinnis at the Belle Fourche van drop-off point, was more of the same. Dell even admits that he didn't know for sure what McGinnis' then-current sentiments concerning the Union actually were. As he approached McGinnis, Dell said, "I [know] how you['ve] felt about the Union the past several years, Dan . . . if you still feel that way, now is the time you can do something about this." Receiving a positive response, Dell proceeded to tell McGinnis what to do. Even so, McGinnis hesitated. When he was called off the Kaycee trip so he could solicit within the plant, he still hesitated. Eventually, after an additional meeting with Dell and Oaks, he finally relented, but didn't begin in earnest until Wednesday. And, he did so only because he had learned from Dell and Oaks the "selling points" provided by the comparison chart. It is clear that McGinnis would not have pursued the petitions had Dell and Oaks not asked him to do so. Their questioning and solicitation of McGinnis clearly violated Section 8(a)(1).

Mike Houston, himself, interrogated both Bierema and Holdhusen, specifically asking whether they had signed a petition, another interrogation which breached Section 8(a)(1). In addition, through the use of the comparison chart, he promised benefits to Bierema and Holdhusen if they got rid of the Union. Houston's fingerprints are all over the solicitation process, wherever it took him around the operation. Every time he used the comparison chart and answered questions concerning it, he was pointing out the benefits which the employees would derive from the Union's ouster. In fact, simultaneously they were questions and promises of benefit. When Houston asked employees if they preferred the ESG benefits, he was in effect asking if they were receptive to getting rid of the Union; and when he asked them that question, he was impliedly, if not directly, promising them something valuable if they got rid of the Union. It was all of a piece.[17]

[17] Because of this observation, Respondent's argument that it was harmless, from a Sec. 7 standpoint, for it to have sought out individuals whose antiunion sentiments were well-known, falls woefully short of persuasive. That is so even had some of those employees been ready to seek decertification on their own. But, as we have seen, some of those (Preisner and McGinnis) were not yet at that stage and would not have acted had Bergum and Dell not prodded them. In any event, the rule is that an employer may not involve itself in the decertification process

In this regard, Houston made approaches to employees and Merrill, McKenna, DeKnikker, and the stripping crew. His conduct toward them is a good example of the interrogation-promise duality. Whenever he suggested that things would be better without the Union, whether by direct or by indirect suggestion, Houston committed a violation of Section 8(a)(1). He also violated that same section of the Act when he directly solicited signatures of employees such as DeKnikker. The same result obtains in situations where he used others to solicit signatures—McGinnis, Brosnahan, and Kirksey. In analyzing this fact pattern, it is not necessary, and the General Counsel acknowledges it to be so, to find these three, plus Preisner, to be Respondent's agents, though the complaint (as amended) seeks that finding. But these four weren't agents so much as they were victims of a hoodwinking. They never understood that they were being used in an illegal fashion for the Company's benefit. The same can be said of Dell's overtures toward Westland.

Similarly, Bergum and Dell's efforts, as well as the effacing Oaks follow the same route. Indeed, their direct solicitations of employees such as Preisner, Callison, and Dave Dell easily exceeded the permissible bounds.

If Respondent had been acting innocently, it would have directed them to an NLRB Regional Office,[18] rather than sending these employees on a disaffection mission. Respondent, with its nefarious motivation, had no interest in determining the true sentiments of the employees by permitting them a free and uncoerced vote in any decertification petition which might be filed. Had it not embarked upon its campaign, it is possible a decertification movement may have begun from the grass roots. Waiting for that happenstance, however, was a risky business for it could not be assured. In addition, it would have subjected Respondent's promises to scrutiny in an openly debated campaign. That would have meant that its benefits for employees outside the bargaining unit might well have been incorporated into the Union's negotiation plans. Under that scenario, it might have been obligated to provide the same benefits to the bargaining unit as it did other employees, but still have to deal with the Union.

In addition, it did not want to file an RM petition[19] (a representation petition filed by an employer) based upon the disaffection petitions for the same reason. The disaffection petitions were only effective in support of a direct withdrawal of recognition. From Respondent's perspective, withdrawal of recognition was a far better and quicker procedure. It had the obvious benefit of not subjecting itself to the aforementioned scrutiny. Furthermore, it was quick and, in large measure, out of sight of the Union whose professional representative lived in Kansas, nowhere near Colony or Belle Fourche. Indeed, instructions were given to avoid certain employees, particularly those who held some level of union office or who were deemed loyal to the Union.[20] The campaign was intended to be quick, relatively stealthy, and be presented as a fait accompli. It would give the Union little time to try to figure out what had happened. In fact, the notice advising employees not to attend the union meeting in the park was also designed to limit the Union's knowledge about what had happened. In that sense it had the tendency to interfere with the Section 7 right of a union to communicate with the employees it represents and therefore violated §8(a)(1) of the Act by interfering with the representational process. *Frontier Hotel & Casino,* 309 NLRB 761, 766 (1992); *Boyer Bros.,* 217 NLRB 342 (1975); *Precision Anodizing & Plating,* 244 NLRB 846 (1979); cf. *Westinghouse Electric Corp.,* 243 NLRB 306 (1979).

The entire campaign and all its features violated Section 8(a)(1). It was a repudiation of the principles set forth in the Act.

The Board has long considered an employer's undue involvement in sparking employee interest in decertifying the incumbent union or otherwise hamstringing it from within (urging resignations, dues-checkoff cancellations and the like) to be an unlawful interference with the employees' Section 7 rights. See generally *Texaco, Inc.,* 264 NLRB 1132 (1982), enfd. 722 F.2d 1226 (5th Cir. 1984), where the Board said at 1133:

> Considering the course of events described above and the entire record herein, we agree with the Administrative Law Judge that "Respondent did not maintain a neutral position here, and it obviously went further than simply answering inquiries of employees." After learning from Sutton of employee dissatisfaction, Respondent initiated and stimulated the activity that led to the employees' withdrawal from the Union and the termination of the contract. Respondent proposed the idea of both the employee petition and the memorandum of agreement to terminate the contract, and also drafted and typed them. In addition, Respondent allowed employees to solicit and sign the petition during working time and provided supervisory assistance in making the petition available to potential signers.
>
> Clearly, Respondent did far more than merely allow employees to exercise the rights guaranteed them in Section 7 of the Act. Respondent actively and effectively participated in the process of furthering employee withdrawal from the Union.
>
> Accordingly, we adopt the Administrative Law Judge's finding that Respondent unlawfully aided in the circulation of the petition and encouraged employees to sign.[14]

[14] See *Shenango Steel Buildings, Inc.*, 231 NLRB 586, 588–589 (1977); *Dayton Blueprint Company, Inc.*, 193 NLRB 1100, 1107-08 (1971).

In addition to *Texaco* and the cases cited therein, other cases covering the point include *Corrections Corp. of America,* 347 NLRB 632 (2006); *Erickson's Sentry of Bend,* 273 NLRB 63,

beyond ministerial assistance. The antiunion predilections of some employees cannot be sparked to the disadvantage of the Union. In general, the employer must keep its hands off. Sec. 7 rights belong to the employees; they may not be manipulated by their employer.

[18] *R. L. White Co.*, 262 NLRB 575, 576 (1982).

[19] See Sec. 9(c)(B) of the Act; also *Levitz Furniture of the Pacific*, 333 NLRB 717 (2001).

[20] Such as the Local's president, Pete Kiley, or its secretary-treasurer, Dennis Wattier, who were rank-and-file employees or to known union supporters such as Rick Reid, Glade Lynch, or Jerry Rose.

64 (1984); *Inter-Mountain Dairymen, Inc.,* 157 NLRB 1590, 1609–1613 (1966).

Following the presentation of the signatures on the disaffection petitions, Respondent naturally took the next step and withdrew recognition of the Union. Since all of the disaffection petitions were the product of the illegal union ouster campaign, they cannot, as a matter of law, be relied upon to support the contention that they properly represent the employees' true sympathies and desires concerning union representation. Indeed, they are nothing more than the classic "tainted" signatures which have been induced by unfair labor practices. Therefore, they are simply not evidence that the Union lost its presumptive majority status. See *Hall Industries,* 293 NLRB 785, 791 (1989), where the Board said, "Since the Respondent actively stimulated the decertification effort and did so in the context of serious unfair labor practices, its conduct in this regard is also a violation of Section 8(a)(1) of the Act and the decertification petition which resulted from its effort is void ab initio." This is no different. To withdraw recognition in circumstances where the Union's majority status has not been properly tested is a violation of Section 8(a)(5). *Levitz Furniture of the Pacific*, supra.

It follows that the unilateral changes in the wages, hours, and terms and conditions of employment which Respondent admits (or at least did not counter with evidence) it instituted also violated Section 8(a)(5). *NLRB v. Katz,* 369 U.S. 736 (1961). These include the $1.25-across-the-board wage increase; the improved vacation benefits, changing the health plan, modifying the 401(k) plan and abrogating the grievance procedures. In addition, it refused to comply with the Union's request for information concerning collective bargaining by refusing to respond to the Union's July 19 letter. In addition, it refused to respond to the Union's additional request for information as set forth in the attachment to the Union's letter of July 23. These refusals also violated Section 8(a)(5). *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149 (1956); *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). See also *Curtiss-Wright Corp. v. NLRB,* 347 F.2d 61 (3d Cir. 1965), enfg. 145 NLRB 152 (1963).

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. It will also be ordered to cease its campaign of encouraging, fostering, and instigating an employee movement to decertify or otherwise oust the Union as the employees' collective-bargaining representative as well as to cease coercively interrogating its employees regarding their union sympathies and desires and promising benefits to interfere with their Section 7 rights. Finally it will be ordered to cease bargaining in bad faith by withdrawing recognition and refusing to provide information relevant to collective bargaining and to stop making unilateral changes in the wages, terms, and conditions of employment. And, given the serious nature of these unfair labor practices and Respondent's demonstrated disregard for employee rights under the Act, a broad remedial order is appropriate. *Hickmott Foods,* 242 NLRB 1357 (1979).

The affirmative action will include an order to recognize the Union and to resume bargaining in good faith with the Union as the exclusive representative of its employees. In this regard Respondent shall immediately provide the information requested by the Union in its letters of July 19 and 23. In an effort to restore the status quo as of July 23, if the Union requests, Respondent will also withdraw any benefits it has granted as a part of its campaign.[21] Finally, Respondent shall be directed to post a notice to employees advising them of their rights and describing the steps it will take to remedy the unfair labor practices which have been found.

Based upon the foregoing findings of fact, legal analysis, and the record as a whole, I make the following

CONCLUSIONS OF LAW

1. Respondent, Bentonite Performance Minerals, LLC, a Product and Service Line of Halliburton Energy Services, Inc., is an employer engaged in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Chemical Workers Union Council/United Food and Commercial Workers Union, CLC, Local 353C is a labor organization within the meaning of Section 2(5) of the Act.

3. The following is an appropriate bargaining unit:

> All production and maintenance employees, including employees temporarily assigned as watchmen, in Respondent's mining, milling and packing operations located near Colony, Wyoming, but excluding office and clerical employees, weigh masters, laboratory technicians, watchmen, foremen and supervisory employees.

4. By coercive interrogation of its employees to determine their sentiments concerning union representation; by proposing the idea of disaffection petitions; by soliciting signatures, both directly and indirectly, of employees on those petitions; by making promises of improved conditions if the Union was ousted as their collective-bargaining representative; and by attempting to interfere with the Union by limiting communications with the employees it represents, Respondent violated Section 8(a)(1) of the Act.

5. By withdrawing recognition of the Union as the exclusive collective-bargaining representative of its Colony, Wyoming production and maintenance employees; by refusing to bargain with the Union for a new collective-bargaining contract; by making unilateral changes in the wages and other terms and conditions of employment of those employees and by refusing to respond to the Union's request for information relevant to collective bargaining, Respondent violated Section 8(a)(5) and (d) of the Act.

[21] This restoration remedy is appropriate in circumstances where the Employer has unilaterally granted benefits greater than previously enjoyed and where that grant was aimed at undermining the Union's representative status. See, e.g., *Carrier Corp.,* 319 NLRB 184, 199 (1995); *House Calls*, 304 NLRB 311, 314 (1990); *Dura-Vent Corp.,* 257 NLRB 430, 433 (1981).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

ORDER

The Respondent, Bentonite Performance Minerals, LLC, a Product and Service Line of Halliburton Energy Services, Inc., Colony, Wyoming, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Coercively interrogating its employees to determine their sentiments concerning union representation.

(b) Proposing the idea of disaffection petitions.

(c) Soliciting employees, either directly and indirectly, to sign disaffection petitions.

(d) Making promises of improved conditions if the Union was ousted as their collective bargaining representative.

(e) Withdrawing recognition of the Union as the exclusive collective-bargaining representative of its employees at its Colony, Wyoming operation.

(f) Unilaterally, without first bargaining with the Union, granting wage increases to members of the Colony bargaining unit.

(g) Unilaterally, without first bargaining with the Union, granting improved vacation benefits, health benefits, retirement benefits, or any other employment connected benefit to members of the Colony bargaining unit.

(h) Refusing to provide the Union with the information it has requested which is relevant to collective bargaining.

(i) Interfering with the Union's right to communicate with the employees it represents.

(j) In any other manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain collectively in good faith with the Union in the following appropriate bargaining unit:

> All production and maintenance employees, including employees temporarily assigned as watchmen, in Respondent's mining, milling and packing operations located near Colony, Wyoming, but excluding office and clerical employees, weigh masters, laboratory technicians, watchmen, foremen and supervisory employees.

(b) Upon written request by the Union, and in the manner set forth in the remedy section, reinstate the wage structure, the health plan, the retirement plan(s), and any other changes of mandatory bargaining subjects which it instituted after July 23, 2007.

(c) Within 14 days after service by the Region, post at its mining and milling operation near Colony, Wyoming, copies of the attached notice marked "Appendix."[23] Copies of the notice, on forms provided by the Regional Director for Region 27 after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 10, 2008.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 2, 2008

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you to determine your sentiments concerning union representation.

WE WILL NOT propose the idea of disaffection petitions in order to disestablish International Chemical Workers Union Council/United Food and Commercial Workers Union, CLC, Local 353C as your collective-bargaining representative.

WE WILL NOT solicit you, either directly and indirectly, to sign disaffection petitions to oust your collective-bargaining representative.

WE WILL NOT make promises of improved conditions in order to induce you to oust your collective-bargaining representative.

WE WILL NOT withdraw recognition of Chemical Workers/UFCW Local 353C as the exclusive collective-bargaining

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[23] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

representative of our employees at our Colony, Wyoming operation.

WE WILL NOT unilaterally, without first bargaining with Chemical Workers/UFCW Local 353C, grant wage increases to members of our Colony bargaining unit.

WE WILL NOT unilaterally, without first bargaining with Chemical Workers/UFCW Local 353C, grant improved vacation benefits, health benefits, retirement benefits, or any other employment connected benefits to members of our Colony bargaining unit.

WE WILL NOT refuse to provide Chemical Workers/UFCW Local 353C with the information it has requested which is relevant to collective bargaining.

WE WILL NOT interfere with Chemical Workers/UFCW Local 353C's right to communicate with you.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act and which are enumerated above.

WE WILL bargain collectively in good faith with Chemical Workers/UFCW Local 353C in the following appropriate bargaining unit:

> All production and maintenance employees, including employees temporarily assigned as watchmen, at our mining, milling and packing operations located near Colony, Wyoming, but excluding office and clerical employees, weigh masters, laboratory technicians, watchmen, foremen and supervisory employees.

WE WILL, upon written request by Chemical Workers/UFCW Local 353C, reinstate the wage structure, the health plan, the retirement plan(s), and any other changes in your benefits and working conditions which we instituted after July 23, 2007.

BENTONITE PERFORMANCE MINERALS, LLC, A PRODUCT AND SERVICE LINE OF HALLIBURTON ENERGY SERVICES, INC.